

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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JOHN R. DEMOS, JR.,

Plaintiff,

vs.

STATE OF NEVADA et al.,

Defendants.

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3:15-cv-00364-RCJ-VPC

**ORDER**

This is a prisoner civil rights case pursuant to 42 U.S.C. § 1983. For the reasons given herein, the Court denies the Application to Proceed in Forma Pauperis (ECF No. 1) and dismisses the proposed complaint without leave to amend.

**I. LEGAL STANDARDS**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1)–(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in Federal Rule 12(b)(6), and the court applies the same standard under § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012). When a court dismisses a complaint

1 upon screening, the plaintiff should be given leave to amend the complaint with directions as to  
2 curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could  
3 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). All  
4 or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the prisoner's claims  
5 lack an arguable basis in law or in fact. This includes claims based on legal conclusions that are  
6 untenable, e.g., claims against defendants who are immune from suit or claims of infringement of  
7 a legal interest which clearly does not exist, as well as claims based on fanciful factual  
8 allegations, e.g., fantastic or delusional scenarios. *See Neitzke v. Williams*, 490 U.S. 319, 327–28  
9 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 10 **II. DISCUSSION**

11 Plaintiff alleges that officers of the State of Nevada arrested him (at the direction of  
12 officers of the State of Washington) on the California side of the Cal-Neva Lodge, which  
13 straddles the California–Nevada border. He has sued the States of Nevada, California, and  
14 Washington in this Court based on the incident. Although Plaintiff invokes the Court's  
15 admiralty jurisdiction under 28 U.S.C. § 1333, the allegations make clear there is no admiralty  
16 jurisdiction, as the incident is not alleged to have happened on navigable waters. This is a civil  
17 rights dispute under § 1983 based on an alleged unreasonable seizure under the Fourth  
18 Amendment.

19 The Court will not grant in forma pauperis status. Defendant has been a restricted filer  
20 under the three-strikes bar of 28 U.S.C. § 1915(g) since at least 2003. (*See* Order, ECF No. 3 in  
21 Case No. 3:03-cv-640 (noting that as of 2000, Plaintiff had filed 184 frivolous actions in  
22 Washington alone). The Court will not give Plaintiff an opportunity to pay the filing fee,  
23 because the proposed complaint fails on its face. The Defendants are sovereign states and  
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1 therefore are not “persons” amenable to suit under § 1983. *See Will v. Mich. Dep’t of State*  
2 *Police*, 491 U.S. 58, 71 (1989).

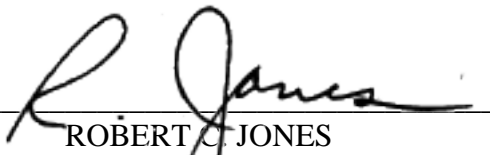
3 **CONCLUSION**

4 IT IS HEREBY ORDERED that the Application to Proceed in Forma Pauperis (ECF No.  
5 1) is DENIED.

6 IT IS FURTHER ORDERED that the case is DISMISSED, and the Clerk shall enter  
7 judgment and close the case. A certificate of appealability is DENIED.

8 IT IS SO ORDERED.

9 Dated this 27th day of July, 2015.

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12 ROBERT C. JONES  
13 United States District Judge  
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